*THE HON'BLE Ms. JUSTICE G. ROHINI

+ **WRIT PETITION No. 2754 of 2006**

% 11/12/2006

#K.L.D.Nagasree ……Petitioner

Vs.

$ Government of India,
Represented by its Secretary,
Ministry of Home Affairs,
New Delhi and others

….Respondents

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> Head Note:

! Counsel for the petitioner : Sri P. Kamalakar

^ Counsel for the respondents : Sri A. Rajasekhar Reddy (Asst. Solicitor General of India)
Dr. P. Bhaskara Mohan
Sri T. Niranjan Reddy
Sri Deepak Bhattacharjee

Cases referred :

[1] AIR 1976 SC 789

[2] AIR 1997 Supreme Court 568

[3] (1997) 9 Supreme Court Cases 132

THE HON'BLE MS. JUSTICE G. ROHINI

WRIT PETITION No. 2754 of 2006

DATED: 11th Decemer, 2006

Between:

K.L.D. Nagasree ……Petitioner

AND

Government of India,
Represented by its Secretary,
Ministry of Home Affairs,
New Delhi and others
….Respondents

THE HON'BLE Ms. JUSTICE G. ROHINI

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WRIT PETITION No. 2754 of 2006

ORDER:

This writ petition is filed assailing the order of the 1st respondent dated 17.11.2003 passed in exercise of the powers conferred under Section 5 (2) of the Indian Telegraph Act, 1885 directing interception of messages from the mobile telephone of the petitioner.

The facts, in brief, are as under:-

The third respondent herein filed charge sheet No. 2/2005 dated 19.09.2005 in the C.B.I. Court, Visakhapatnam against three accused, the writ petitioner being A-2, for an offence punishable under Section 120-B IPC read with Section 7, Section 13 (1) (e) and Section 13 (2) of the Prevention of Corruption Act, 1988. The same was taken cognizance as C.C.No.1 of 2006 on the file of the C.B.I. Court, Visakhapatnam.

As per the charge-sheet dated 19-9-2005, the investigation revealed that between 11.11.2003 and 25.11.2003, there were telephonic conversation between the complainant and the accused persons, which established the demand of illegal gratification by A1 and A2, which was conveyed by A3 to the complainant. The conversations were recorded by the complainant on two audio cassettes. The Special Unit of C.B.I., New Delhi was monitoring the communication to and from Telephone No.98-484-61953 belonging to A2 (writ petitioner) after obtaining the approval of the competent authority *Vide* order No. 14/3/97-CBI dated 17.11.2003, Ministry of Home Affairs, Government of India. The call details of the accused persons and the complainant collected during the investigation established that the accused were involved in corrupt activities. Along

with the charge sheet, list of documents consisting of 55 documents were filed, in which, the order of the Government of India dated 17.11.2003 purportedly passed in exercise of the powers under Section 5 (2) of the Indian Telegraph Act, 1885 (for short, 'the Act') read with Rule 419-A of Indian Telegraph Rules, 1951 (for short, 'the Rules') was filed as Document No. 37.

Having obtained certified copies of the said documents, including the order of the 1st respondent, dated 17-11-2003, this writ petition is filed contending *inter alia* that the interception of messages from the mobile telephone of the petitioner and recording the same are wholly illegal and without jurisdiction.

I have heard Sri E. Manohar, the learned Senior Counsel appearing for the petitioner and Sri Deepak Bhattacharjee, the learned Counsel appearing for the first respondent as well as Sri T. Niranjan Reddy, the learned Counsel appearing for the respondents 2 and 3.

Before proceeding further, it is necessary to extract Section 5 of the Indian Telegraph Act, 1885 as under:-

> ***5. Power for Government to take possession of licensed telegraphs and to order interception of messages:-***
>
> *(1) On the occurrence of any public emergency or in the interest of the public safety, the Central Government or a State Government, or any officer specially authorized in this behalf by the Central or a State Government may, if satisfied that it is necessary or expedient so to do, take temporary possession (for so long as the public emergency exists or the interest of the public safety requires the taking of such action) of any telegraph established, maintained or worked by any person licensed under this Act.*
>
> *(2) On the occurrence of any public emergency, or in the interest of public safety, the Central Government or a State Government may, if satisfied that it is necessary or expedient so to do in the interests of the sovereignty and integrity of India, the security of the State, friendly relations with Foreign States or public order or for preventing incitement to the commission of an offence, for reasons to be recorded in writing, by*

order, direct that any message or class of messages to or from any person or class of persons, or relating to any particular subject, brought for transmission by or transmitted or received by any telegraph, shall not be transmitted, or shall be intercepted or detained, or shall be disclosed to the Government making the order or an officer thereof mentioned in the order.

Provided that press messages intended to be published in India of correspondents accredited to the Central Government or a State Government shall not be intercepted or detained, unless their transmission has been prohibited under this sub-section."

A bare reading of the above provision shows that for the purpose of making an order for interception of messages in exercise of powers under sub-section (1) or sub-section (2) of Section 5 of the Telegraph Act, 1885 (for short, 'the Act'), the occurrence of any pubic emergency or the existence of a public safety interest are the *sine qua non.*

In the event of the occurrence of any public emergency or in the interest of public safety the interception of messages can be ordered under sub-section (2) of Section 5 by the Central Government or the State Government, if satisfied, that it is necessary or expedient so to do in the interest of :-

(i) The sovereignty and integrity of India.
(ii) The security of the State.
(iii) Friendly relations with foreign States.
(iv) Public order.
(v) For preventing incitement to the commission of an offence.

In HUKAM CHAND SHYAM LAL v. UNION OF INDIA[1] the Supreme Court while observing that the existence of the emergency which is a pre-requisite for the exercise of power under Section 5 of the Act must be a ***public emergency*** and not any other kind of emergency and that as a preliminary step to the exercise of jurisdiction under Section 5 the Government or the authority concerned must record its satisfaction as to the existence of such an

emergency held as under :

> *"The expression public emergency has not been defined in the statute, but contours broadly delineating its scope and features are discernible from the section which has to be read as a whole. In sub-section (1) the phrase occurrence of any public emergency is connected with and is immediately followed by the phrase or in the interests of the public safety. These two phrases appear to take colour from each other. In the first part of sub-section (2) those two phrases again occur in association with each other, and the context further clarifies with amplification that a public emergency within the contemplation of this section is one which raises problems concerning the interest of the public safety, the sovereignty and integrity of India, the security of the State, friendly relations with foreign States or public order or the prevention of incitement to the commission of an offence. It is in the context of these matters that the appropriate authority has to form an opinion with regard to the occurrence of a public emergency with a view to taking further action under this section. Economic emergency is not one of those matters expressly mentioned in the statute. Mere economic emergency as the High Court calls it may not necessarily amount to a public emergency and justify action under this section unless it raises problems relating to the matters indicated in the section."*

In **People's Union for Civil Liberties (PUCL), Vs. Union of India**[2] while deciding a Public Interest Litigation under Article 32 of the Constitution of India, the Supreme Court while considering the scope and object of Section 5 (2) of the Telegraph Act 1885 in detail and while observing that telephone-tapping is a serious invasion of an individual's privacy held that the right to privacy is a part of the right to ***life*** and ***personal liberty*** enshrined under Article 21 of the Constitution. It was further held that though the question whether right to privacy can be claimed or has been infringed in a given case would depend on the facts of the said case, the right to hold a telephone conservation in the privacy of one's home or office without interference can certainly be claimed as ***right to privacy*** and therefore telephone-tapping would infract Article 21 of the Constitution of India

unless it is permitted according to the procedure established by law.

It would be relevant to extract the following excerpts from the above decision of the Supreme Court with regard to exercise of power under Section 5 (2) of the Act.

> *"Section 5(2) of the Act permits the interception of messages in accordance with the provisions of the said section. Occurrence of any public emergency or in the interest of public safety are the sine qua non for the application of the provisions of Section 5(2) of the Act. Unless a public emergency has occurred or the interest of public safety demands, the authorities have no jurisdiction to exercise the powers under the said section. Public emergency would mean the prevailing of a sudden condition or state of affairs affecting the people at large calling for immediate action. The expression public safety means the state or condition of freedom from danger or risk for the people at large. When either of these two conditions are not in existence, the Central Government or a State Government or the authorised officer cannot resort to telephone-tapping even though there is satisfaction that it is necessary or expedient so to do in the interests of sovereignty and integrity of India etc. In other words, even if the Central Government is satisfied that it is necessary or expedient so to do in the interest of the sovereignty and integrity of India or the security of the State or friendly relations with sovereign States or public order or for preventing incitement to the commission of an offence, it cannot intercept the messages or resort to telephone-tapping unless a public emergency has occurred or the interest of public safety or the existence of the interest of public safety requires. Neither the occurrence of public emergency nor the interest of public safety are secretive conditions or situations. Either of the situations would be apparent to a reasonable person.*
>
> *The first step under Section 5(2) of the Act, therefore, is the occurrence of any public emergency or the existence of a public safety interest. Thereafter the competent authority under Section 5(2) of the Act is empowered to pass an order of interception after recording its satisfaction that it is necessary or expedient so to do in the interest of (i) sovereignty and integrity of India, (ii) the security of the State, (iii) friendly relations with foreign States, (iv) public order or (v) for preventing incitement to the commission of an offence. When any of the five situations mentioned above to the satisfaction of*

the competent authority require then the said authority may pass the order for interception of messages by recording reasons in writing for doing so."

While taking note of the fact that no Rules were framed by the Central Government under Section 7 (2) (b) of the Act laying down the precautions to be taken for preventing the improper interception or disclosure of messages under Section 5 (2) of the Act, the Supreme Court in **People's Union for Civil Liberties's** case (2 supra) directed observance of certain procedure in order to rule out arbitrariness in the exercise of power under Section 5(2) of the Act till the time the Central Government lays down the procedure under Section 7 (2) (b) of the Act. The said directions are as under:

"1. An order for telephone-tapping in terms of Section 5 (2) of the Act shall not be issued except by the Home Secretary, Government of India (Central Government) and Home Secretaries of the State Governments. In an urgent case the power may be delegated to an officer of the Home Department of the Government of India and the State Government not below the rank of Joint Secretary. Copy of the order shall be sent to the Review Committee concerned within one week of the passing of the order.

2. The order shall require the person to whom it is addressed to intercept in the course of their transmission by means (of) a public telecommunication system, such communications as are described in the order. The order may also require the person to whom it is addressed to disclose the intercepted material to such person and in such manner as are described in the order.

3. The matters to be taken into account in considering whether an order is necessary under Section 5 (2) of the Act shall include whether the information which is considered necessary to acquire could reasonably be acquired by other means.

4. The interception required under Section 5 (2) of the Act shall be the interception of such communications as are sent to or from one or more addresses, specified in the order, being an address or addresses likely to be used for the transmission of communications to or from, from one particular person

specified or described in the order or one particular set of premises specified or described in the order.

5. The order under Section 5 (2) of the Act shall, unless renewed, cease to have effect at the end of the period of two months from the date of issue. The authority which issued the order may, at any time before the end of two months' period renew the order if it considers that it is necessary to continue the order in terms of Section 5 (2) of the Act. The total period for the operation of the order shall not exceed six months.

6. The authority which issued the order shall maintain the following records:

(a) the intercepted communications,

(b) the extent to which the material is disclosed,

(c) the number of persons and their identity to whom any of the material is disclosed.

(d) the extent to which the material is copied, and

(e) the number of copies made of any of the material

.

7. The use of the intercepted material shall be limited to the minimum that is necessary in terms of Section 5 (2) of the Act.

8. Each copy made of any of the intercepted material shall be destroyed as soon as its retention is no longer necessary in terms of Section 5 (2) of the Act

.

9 . There shall be a Review Committee consisting of Cabinet Secretary, the Law Secretary and the Secretary, Telecommunication at the level of the Central Government. The Review Committee at the State level shall consist of Chief Secretary, Law Secretary and another member, other than the home Secretary, appointed by the State Government.

(a) The Committee shall on its own, within two months of the passing of the order by the authority concerned, investigate whether there is or has been a relevant order under Section 5 (2) of the Act. Where there is or has been an order whether there has been any contravention of the provisions of section 5 (2) of the Act.

(b) If on an investigation the Committee concludes that there has been a contravention of the

provisions of Section 5 (2) of the Act, it shall set aside the order under Scrutiny of the Committee. It shall further direct the destruction of the copies of the intercepted material.

(c) If on investigation, the Committee comes to the conclusion that there has been no contravention of the provisions of Section 5 (2) of the Act, it shall record the finding to that effect."

Pursuant to the above procedural safeguards specified by the Supreme Court, the Central Government had brought out an amendment to the Indian Telegraph Rules 1951 by inserting Rule 419-A *vide* G.S.R. 123 (E), dated 16.02.1999. Rule 419-A, to the extent it is relevant for the purpose of the present case, runs as under:-

*"**419-A (1)** Direction for interception of any message or class of messages under sub-section (2) of Section 5 of the Indian Telegraph Act, 1885 (hereinafter referred to as the said Act) shall not be issued except by an order made by the Secretary to the Government of India in the Ministry of Home Affairs in case of Government of India and by the Secretary to the State Government in charge of the Home Department in the case of a State Government. In emergent cases such order may be made by an officer, not below the rank of a Joint Secretary to the Government of India, Who has been duly authorized by the Union Home Secretary or the State Home Secretary, as the case may be, Such order shall contain reasons for such direction, A copy of such order shall be forwarded to the concerned Review Committee within a period of seven days;*

Provided that in emergent cases,-

(i) in remote areas, where obtaining of prior directions for interception of messages or class of messages is not feasible; or

(ii) for operational reasons, where obtaining of prior directions for interception of messages or class of messages is not feasible

the officer concerned may carry out the required interception of messages or class of messages subject to its confirmation from the concerned competent officer within a period of fifteen days.

(2) ... .

(3) ... .

(4) ... .

(5) The directions for interception shall remain in force, unless revoked earlier, for a period not exceeding ninety days from the date of issue and may be renewed but same shall not remain in force beyond a total period of one hundred and eighty days.

(6) ....

(7) The officer authorised to intercept any message or class of messages shall maintain proper records mentioning therein, the intercepted message or class of messages, the particulars of persons whose message has been intercepted, the name and other particulars of the officer or the authority to whom the intercepted message or class of message has been disclosed, the number of copies of the intercepted message or class of message made and the mode or the method by which such copies are made, the date of destruction of the copies and the duration within which the directions remain in force.

(8) The Central Government and the State Government, as the case may be, shall constitute a Review Committee. The Review Committee to be constituted by the Central Government shall consist of the following namely :-

(a) Cabinet Secretary .... Chairman

(b) Secretary to the Government of India In-charge, Legal Affairs .. Member

(c) Secretary to the Government of India .. Member

The Review Committee to be constituted by a State Government shall consist of the following, namely :-

(a) Chief Secretary ... Chairman

(b) Secretary Law/Legal Remembrancer ... Member

(d) Secretary to the State Government (other than the Home Secretary) .... Member

(9) The Review Committee within a period of sixty days from the issue of the directions shall suo moto make necessary enquiries and

investigations and record its findings whether the directions issued under sub-rule (1) are in accordance with the provisions of sub-section (2) of Section 5 of the Act. When the Review Committee is of the opinion that the directions are not in accordance with the provisions referred to above, it may set aside the directions and order for destruction of the copies of the intercepted message or class of messages."

It is clear that Rule 419-A of the Rules which has been made in terms of the procedural safeguards laid down by the Supreme Court in **People's Union for Civil Liberties's** case (2 supra) is aimed at safeguarding the right to privacy of an individual. The procedure laid down under Rule 419-A includes that a copy of the order under Section 5 (2) of the Act shall be forwarded to the concerned Review Committee within a period of seven (7) days and that the directions for interception shall remain in force for a period not exceeding 90 days from the date of issue and the renewal if any shall not be beyond 180 days. The Review Committee constituted under sub-rule (8) is required to make necessary enquiries and investigations and recorded its findings whether the directions issued under sub-rule (1) are in accordance with the provisions of Section 5 (2) of the Act. Such enquiry and investigation shall be done within a period of 60 days from the issue of directions under sub-rule (1) of Rule 419-A. It is also relevant to note that if the Review Committee finds that the direction is not in accordance with sub-Section (2) of Section 5, the committee shall order for the destruction of the copies of the messages.

In the light of the above provisions, the question that arises for consideration in this writ petition is whether the impugned order dated 17.11.2003 and the action taken thereupon by the Deputy Superintendent of Police, CBI, in intercepting the mobile telephone of the petitioner are in accordance with law.

On behalf of the 1st respondent – Union of India, a counter-affidavit has been filed denying the allegation that the interception of

mobile phone of the petitioner was not as per the observations and guidelines laid down by the Supreme Court. It is also stated that the order dated 17-11-2003 was duly reviewed by the Review Committee headed by the Cabinet Secretary and was found to be in order.

A separate counter-affidavit has been filed by the Superintendent of Police, C.B.I. on behalf of the respondents 2 and 3 stating that the CBI through its own sources had information prior to 5-12-2003 regarding the corrupt activities and other accused and in order to prevent the incitement to commission of an offence as well as public order and security of the State, the approval of the Competent Authority was sought for intercepting the phones of the petitioner and the same was allowed by the 1st respondent by order dated 17-11-2003 which is in conformity with Section 5 of the Act and Rule 419-A of the Rules. Accordingly, charge-sheet has been laid against the petitioner and others and the evidence collected including the copies of the intercepted conversation were placed before the Court. The steps taken by the respondents 2 and 3 for interception of the telephonic conversation come under the purview of collection of evidence by the investigating officer according to law and therefore the same cannot be held to be violative of Article 19 (1) (a) and Article 21 of the Constitution of India. The copies of the recorded conversation form part of the charge-sheet and essential for trial of the petitioner and other accused. At any rate, since the Court of Special Judge (CBI), has already taken cognizance in the matter, the present writ petition is misconceived and liable to be dismissed.

The 4th respondent – BSNL also filed a counter-affidavit stating that the interception of the Landline No.2501777 of the writ petitioner was done by the CBI pursuant to the order obtained from the 1st respondent.

At the outset, it would be necessary to extract the impugned order dated 17.11.2003 which runs as under:-

MINISTRY OF HOME AFFAIRS

(Government of India)

ORDER

Whereas as per provision in sub-rule (1) of Rule 419-A of the Indian Telegraph Rules, 1951 notified on 16.02.1999 as Indian Telegraph (First Amendment) Rules, 1999 framed in exercise of the powers conferred by Section 7 of the Indian Telegraph Act, 1885 (13 of 1885), the Secretary, Ministry of Home Affairs, Government of India, has been authorized to exercise powers of the Central Government under sub-section (2) of Section 5 of the Indian Telegraph Act, 1885 (13 of 1885).

2. Now, therefore, I, Union Home Secretary, being satisfied that it is necessary/expedient so to do in the interests of sovereignty and integrity of India/the security of the State/friendly relations with foreign states/public order/preventing incitement to the Commission of an offence hereby direct that any telephone message relating to clandestine contract/movement/activity etc., to and from 98-484-61953, brought for transmission by or transmitted shall be intercepted and disclosed to the Director, CBI.

3. I am further satisfied that it is necessary to monitor this Telephone as the information cannot be acquired through any other reasonable means.

4. This order shall remain in force for a period not exceeding 30 days from the date of issue.

Sd/- xxxxxx
Secretary to Govt. of India
Ministry of Home Affairs,
New Delhi.

New Delhi,
Dated: 17.11.2003

As can be seen, the said order was passed by the Secretary to the Government of India, Ministry of Home Affairs in exercise of the powers under Section 5 (2) of the Act directing that any telephone message relating to and from 98-484-61953 brought for transmission

by or transmitted shall be intercepted and disclosed to the Director, C.B.I.

As held by the Supreme Court in PEOPLE'S UNION FOR CIVIL LIBERTIES'S case (2 supra) the competent authority under Section 5 (2) of the Act is empowered to pass an order of interception only on the occurrence of any public emergency or in the interest of public safety which are held to be *sine qua non* for the application of the provisions of sub-section (2) of Section 5 of the Act.

However, a mere perusal of the impugned order, extracted above, shows that the same did not refer either to occurrence of any public emergency or existence of public safety interest which are pre-requisites for the exercise of power under Section 5 (2) of the Act.

As a matter of fact, except repeating all the five situations mentioned in sub-section (2) of Section 5 verbatim, no specific reason which warranted interception of the petitioner's mobile telephone was mentioned. The said fact itself shows that the impugned order was passed mechanically without application of mind to the facts and circumstances of the case on hand. Hence, on the face of it, the impugned order is not in compliance with the mandatory requirement of sub-section (2) of Section 5. Not only the satisfaction of the authority as to the occurrence of public emergency or the existence of public safety interest is absent, but even the satisfaction expressed with regard to the other situations enumerated under sub-section (2) of Section 5 of the Act does not stand the legal scrutiny.

That apart, the specific allegation made by the petitioner with regard to non-compliance of the subsequent procedure required to be followed under Rule 419-A could not be contradicted by the respondents. Except reiterating the object and purport of Section 5 (2) of the Act and the guidelines issued by the Supreme Court in PEOPLE'S UNION FOR CIVIL LIBERTIES's case (2 supra), the counter-affidavits filed on behalf of the respondents are silent as to the procedure laid down under Rule 419-A much less the compliance

thereof.

On the other hand, the material furnished to this Court in a sealed cover by the learned Counsel appearing for the Government of India shows that the Review Committee constituted under Rule 419-A (8) met on 6-12-2004 for the purpose of review of the orders authorizing interception/tapping of telephones under Section 5 (2) of the Act. In the Minutes Book of the meeting, it was recorded that the consolidated statement of the orders authorizing interception passed by the Home Secretary since 23-6-2003 was placed before the Committee and that the Committee had decided to hold another meeting during which the following information was desired to be placed before it.

> *(i) Total number of telephone lines/E-Mail for which authorizations were issued indicating separately -*
> *(a) No. of lines for which sanction was issued for the first time (90 days or less);*
> *(b) No. of lines for which extension (180 days or less) was given;*
> *(c) No. of lines for which sanction was issued resulting in monitoring for more than 180 days indicating those where monitoring may be beyond 200 days.*
> *(ii) Total number of lines monitoring of which has proved fruitful, indicating the results broadly.*

However, no other material has been placed before this Court to show that the Review Committee has met subsequently for the said purpose and that the information required by the Committee was made available to the Committee. Thus, it is clear that no finding as required under sub-rule (9) of Rule 419-A of the Rules was recorded by the Review Committee.

Admittedly by 6-12-2004, on which date the Review Committee met, more than a year had lapsed from the date of the impugned order dated 17-11-2003. There is absolutely no material to show that the said order was forwarded to the Review Committee within 7 days. It is also relevant to note that the order of interception remains in force for

a maximum period of 180 days and apparently by the date the Review Committee met on 6-12-2004 the said period had lapsed.

Viewed from any angle, the impugned order dated 17-11-2003 cannot be held to be in accordance with the provisions of Section 5 (2) of the Act and Rule 419-A of the Rules and therefore the same being ex facie illegal is liable to be set aside.

Then, the question that follows is whether the information obtained on the basis of the said order can be taken into consideration in the trial in C.C.No.1 of 2006 pending on the file of CBI Court, Visakhapatnam.

The learned Senior Counsel appearing for the petitioner contended that the expression 'shall' used in sub-rules (1), (5) & (9) of Rule 419-A of the Rules shows that the procedure prescribed is mandatory and therefore the material obtained in violation of the said provision cannot be taken into consideration for any purpose whatsoever.

On the other hand, the learned Counsel for the respondents contended that Rule 419-A is procedural in nature and therefore non-compliance if any is not fatal.

The law is well-settled that whether a statute is directory or mandatory would not be dependent on the user of the words 'shall' or 'may', but such a question has to be answered having regard to the purpose and object the statute seeks to achieve. As held by the Supreme Court in MOHAN SINGH v. INTERNATIONAL AIRPORT AUTHORITY OF INDIA[3] the distinction of mandatory compliance or directory effect of the language depends upon the language couched in the statute under consideration and its object, purpose and effect. The distinction reflected in the use of word 'shall' or 'may' depends on conferment of power.

In a catena of decisions, it was held by the Supreme Court that a statutory provision which is procedural in nature although employs the word 'shall' may not be held to be mandatory if thereby no

prejudice is caused *[vide Raza Buland Sugar Co. Ltd. v. Municipal Board, Rampur {AIR 1965 SC 895}; State Bank of Patiala v. S.K. SHARMA { (1996) 3 SCC 364}, Venkataswamappa v. Special Dy. Commr. (Revenue) { (1997) 9 SCC 128}; Vimal Krishna v. State of Bihar { (2003) 6 SCC 401} and P.T. RAJAN v. T.P.M. SAHIR {(2003) 8 SCC 498}].*

As noted above, Section 5 (2) of the Act is aimed at preventing indiscriminate telephone-tapping so as to protect the right to privacy of a person and the object of enacting Rule 419-A of the Rules is to rule out arbitrariness in the exercise of power under Section 5 (2) of the Act. The Supreme Court in PEOPLE'S UNION FOR CIVIL LIBERTIES'S case (2 supra) while expressing displeasure as to the inaction on the part of the Central Government in making Rules prescribing the procedure to be followed for interception of messages under sub-section (2) of Section 5 of the Act laid down certain procedural safeguards which have been adopted in toto while inserting Rule 419-A of the Rules.

Keeping in view the object and purpose of the said Rules as declared in PEOPLE'S UNION FOR CIVIL LIBERTIES'S case (2 supra) and particularly since the violation of the said provisions would result in infraction of right to privacy of an individual which is a part of the right guaranteed under Article 21 of the Constitution of India, I am of the opinion that Rule 419-A though procedural in nature is mandatory and the non-compliance of the same would vitiate the entire proceedings.

It is also relevant to note that under sub-rule (9) if the Review Committee is of the opinion that the directions are not in accordance with the provisions of Rule 419-A, it is empowered to set aside the directions and order for destruction of the copies of the intercepted message. The fact that the consequences of non-compliance of the procedure prescribed under Rule 419-A are also provided under the same Rule further makes clear the intention of the Legislature to make

the said procedure mandatory. Hence, the non-compliance of the procedure under Rule 419-A is undoubtedly fatal.

At any rate, since the impugned order is also in contravention of the substantive law as laid down in sub-section (2) of Section 5 of the Act and is declared illegal, the consequential action of the respondents 2 and 3 in intercepting the mobile telephone of the petitioner is automatically rendered unauthorised. Hence, whatever information is obtained pursuant to the order dated 17-11-2003 cannot be taken into consideration for any purpose whatsoever.

For the reasons stated above, the Writ Petition is allowed declaring the impugned order dated 17-11-2003 as illegal and void and consequently directing that the copies of the intercepted messages pursuant to the said order shall be destroyed. No costs.

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G. ROHINI, J.

Dated: 11.12.2006
Bud/gbs
Note:- LR copy to be marked.

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[1] AIR 1976 SC 789

[2] AIR 1997 Supreme Court 568

[3] (1997) 9 Supreme Court Cases 132